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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,087	12/12/2001	Daniel C. Biederman	062891.0610	6907
5073	7590	04/09/2007		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER PATEL, AJIT	
			ART UNIT 2616	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE		DELIVERY MODE
3 MONTHS		04/09/2007		ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/09/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary**

Application No.

10/016,087

Applicant(s)

BIEDERMAN, DANIEL C.

Examiner

AJIT G. PATEL

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 34 and 35 are rejected under 35 U.S.C. 101 because

Regarding claim 34, the claimed subject matter "a computer program product ---" and "a computer readable medium ---" is directed toward a software program per se. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process. In contest, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Regarding claim 35, the recitation "the computer-readable medium is one selected from group consisting of a data signal embodied in a carrier wave" is non statutory.

3. Claims 34 and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 34, the recitation "computer program product comprising ---program codes for ---" was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make

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and/or use the invention. Further, the recitation "computer program product --- " is not supported by the specification. It is not clear from the specification what "product" has been disclosed. In claim 35, the recitation "the computer readable medium is selected from the group consisting of --- a data signal embodied in a carrier wave" is not supported by the disclosure as originally filed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-15, 18-34, 36-41, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickett (of the record) in view of Gerszberg et al (newly cited, Pat. # 6,714,534).

For claim 1-15, Pickett discloses an access control system having centralized control comprising:

An interface, the interface receiving a packet (see box 20 in fig. 3);

A packet inspection and assembly unit, the packet inspection and assembly unit examining the packet received from the interface (see box 50, San Francisco in fig. 47 A); and a packet buffering, processing and management unit, the packet buffering,

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processing and management unit accepting packets in response to a power failure

(lines 1-10, col. 41);

A second packet inspection and assembly unit, the second packet inspection and assembly unit examining the packet sent to the second packet inspection and assembly unit by the second interface (see box 50, New York in fig. 47A); Wherein the packet buffering, processing and management unit accepts only voice packets (col. 41, lines 1-10); Wherein the packet buffering, processing and management unit accepts only high priority packets (col. 41, lines 1-10); wherein the packet inspection and assembly unit determines high priority packets by examining the header of each packet received by the interface (see RTC in fig. 49A); wherein the packet inspection and assembly unit determines high priority packets by examining the contents of each packet received by the interface (see col. 41, lines 1-10); wherein the packet buffering, processing and management unit accepts only high priority packets (col. 41, lines 1-10); wherein the second packet inspection and assembly unit determines high priority packets by examining the header of each packet received by the second interface ( col. 41, lines 1-10) and (RTC in fig. 49 A); wherein the second packet inspection and assembly unit determines high priority packets by examining the contents of each packet received by the second interface (col. 41, lines 1-10); wherein the high priority packet is define by one or more of a service level agreement, a quality of service metric, a bandwidth allocation, virtual local area network assignment, a class of service, and an Internet Protocol address (col. 41, lines 1-10); wherein the high priority packet is define by one or more of a service level agreement, a quality of service metric, a bandwidth allocation,

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virtual local area network assignments, a class of service, or an Internet Protocol address (col. 41, lines 1-10); wherein the subscriber client comprises one or more of a Internet Protocol telephony device, a wireless telephone, a plain old telephony system telephony device, a gateway device, a hub, a switch, a personal computer, a conventional television, a video converter, a set top box, or a router (fig. 47 A); wherein the packet buffering, processing and management unit selectively performs compression/decompression operation on packets (col. 5, lines 1-3); wherein the packet buffering, processing and management sends a message including a power failure to a source of a rejected packet upon a power failure (col. 30, lines 26-46); means for determining whether to transmit or drop the packet (col. 41, lines 1-10); the power sources comprising at least one main power and one backup power supply (col. 3, lines 31-37); wherein the packet buffering unit regulates bandwidth in response to a power failure (box 99 in fig. 5); and further comprising a processor examine packets (MGCP controller in fig. 47A) and a router (box 50 in fig. 47A).

For claims 1-15, 18-28,36-41 and 43, Pickett discloses all the subject matter of the claimed invention with the exception of selectively accepting packets in response to a power failure in a communications network. Gerszberg et al from the same or similar fields of endeavor teaches a provision of selectively accepting packets in response to a power failure (col. 7, lines 48-68; 1-12, col. 8). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use selectively accepting packets in response to a power failure as taught by Gerszberg et al in the communications network of Pickett. The selectively accepting packets in response to a

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power failure into the network of Pickett since Pickett does teach storing packet when power failed. The motivation for using selectively accepting packets in response to a power failure as taught by Gerszberg et al into the communication network of Pickett being that it provides much higher utilizations while maintaining the guaranteed QoS and preventing loss of data packets.

For claims 25-34, Pickett discloses all the subject matter of the claimed invention with the exception of identifying available power source in a communication network. However, identifying available power sources is well known in the art. Thus, it would have been obvious to one skilled in the art to identifying available power sources in the communications network of Pickett. The identifying available power sources can be implemented/modified into the network of Pickett since Pickett does teach power supply and backup power supply. The motivation for using identifying available power sources into the communications network of Pickett being that it provides the system more reliable since it detects the power failure.

6. Claims 16-17,35,42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickett and Gerszberg et al as applied to claims 1-15,18-34,36-41,43 above, and further in view of Ozer et al (of the record).

For claims 16-17,35 and 42, Pickett and Gerszberg et al discloses all the subject matter of the claimed invention with the exception of a message indicating a power has been restored to a source of a rejected packet as recited in claim 16, the length of time of the power failure as recited in claims17 and 42; one selected from the group

consisting of CD-ROM, a flash memory, system memory, floppy disk, a tape drive, a hard drive, and a data signal as recited in claim 35. Ozer et al from the same or similar fields of endeavor teaches a provision of a message indicating a power has been restored to a source of a rejected packet as recited in claim 16; the length of time of the power failure as recited in claims 17 and 42 and can be selected from the group consisting all devices recited in claim 42 (col. 7, lines 6-9). Thus, it would have been obvious to one skilled in the art to a message indicating a power has been restored to a source of a rejected packet as recited in claim 16; the length of time of the power failure as recited in claims 17 and 42 and can be selected from the group consisting all devices recited in claim 42 as taught by Ozer et al in the communication system of Pickett and Gerszberg et al. The motivation for using a message indicating a power has been restored to a source of a rejected packet as recited in claim 16; the length of time of the power failure as recited in claims 17 and 42 and can be selected from the group consisting all devices recited in claim 42 taught by Ozer et al into the communication network of Pickett and Gerszberg et al being that it prevents loss of data packets and make the system more reliable.

7. Applicant's arguments filed 1/18/2007 have been fully considered but they are not persuasive. The applicant argued that Gerzberg fails to disclose selectively accepting packets in response to a power failure. Examiner respectfully disagreed with the applicant. Gerzberg discloses in col. 7, lines 48-68 and col. lines 1-12 that the lifeline provides the power to the device for communication to be continued at the time



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of power failure. Therefore, the recitation of selectively accepting packets in response to a power failure is broadly interpreted as that the lifeline provides the power to the device for communication to be continued at the time of power failure.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJIT G. PATEL whose telephone number is 571-272-3140. The examiner can normally be reached on MONDAY-SATURDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AP

  
**Ajit Patel**  
**Primary Examiner**